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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION NO.1285 OF 2006

PETITIONER

Smt. Anu @ Anuradha Agrawal W/o
Vinay Agrawal, aged about 28 years C/o
Forth Mile Stone, Chayan para, Post
Salugada, Police Station Bhaktinagar,
District Jalpaigudi West Bengal

Through – Power of Attorney Suresh
Kumar Bansal, S/o Late Santial Bansal,
aged about 50 years, R/o Kotra Road,
Raigarh, District Raigarh C.G.

versus

RESPONDENT

Vinay Agrawal S/o Sagar Agrawal, aged
about 29 years, R/o Gandhiganj Raigarh,
Police Station Raigarh, District Raigarh
C.G.

Present : Mr.Rajesh Pandey, learned counsel for the petitioner.

ORAL ORDER
(Passed on 20th March, 2006)

A short question that arises for decision-making in this writ petition is whether an application filed by the petitioner under Order 9 Rule 13 of CPC before the Civil Court which had passed the decree for seeking setting aside of the ex parte decree should be heard and decided by the Civil Court itself or such an application is liable to be transferred to the Family Court on Constitution of the Family Court in terms of Section 8 of the Family Courts Act 1984 (for short 'the Act'). This question need not detained the Court for long. The provisions of the Act in that regard are quite specific and do not involve interpretation. Section 8 of the Act reads as follows:



"8. Exclusion of jurisdiction and pending proceedings.- Where a Family Court has been established for any area,-

(a) no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the *Explanation* to that sub-section.

(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

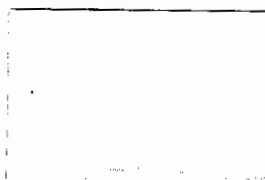
(c) every suit or proceeding of the nature referred to in the *Explanation* to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974),-

(i) which is pending immediately before the establishment of such Family Court before any district court or subordinate court referred to in that sub-section or, as the case may be, before any magistrate under the said Code; and

(ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established,

shall stand transferred to such Family Court on the date on which it is established."

(2) No doubt, when the Family Court was established, the application filed by the petitioner under Order 9, Rule 13 of CPC was pending before the civil Court which had passed *ex parte* decree against the petitioner granting decree of divorce and when that proceeding was pending, the family Court was established. Clause (a) of Section 8 divests



the jurisdiction of the civil Court in relation to the exercise of any jurisdiction in respect of any suit or proceeding of the nature referred to in the explanation to sub-Section (1) of Section 7. Clause (c) of Section 8 mandates that every suit or proceeding pending on the file of the civil Court immediately before the establishment of Family Court shall stand transferred to the Family Court on the date on which it is established. In other words, every suit or proceeding which were pending on the date of the establishment of the Family Court shall stand transferred to the Family Court statutorily without the intervention of the actions of the parties.

(3) In the result, the writ petition is dismissed. No costs.

Sd/-
Chief Justice

B. Singh